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Letter Ruling 03-10: Sales Tax Consequences of Two Part Printing Process

October 3, 2003

You requested a letter ruling regarding the application of the Massachusetts sales tax to sales of materials printed in Massachusetts and shipped directly to stores outside of Massachusetts via UPS.

FACTS

***** (" the Printer") is a commercial printer located in Massachusetts. It has contracted with a franchiser and its franchisees to print menus. There is no written contract between the parties. The franchiser is located in Massachusetts. Most of the franchisees' independently operated franchises are located outside of Massachusetts.

The menus are printed in two stages. In the first stage, the menus are printed containing only information common to all the stores. At this phase in the printing process, the Printer refers to the printed items as "shells." The franchiser is billed for printing the shells and shipping the finished menus, for which the Printer charges a flat rate shipping charge per 1000 menus. The shells remain with the Printer.

In the second stage of printing the menus, which occurs at a later date, each franchisee store informs the Printer of the number of menus it wants and the additional information regarding items and prices it wants imprinted onto its menus. The Printer imprints each franchisee's store specific information onto the menus and delivers the completed menus to UPS for delivery to the appropriate franchisee. The Printer bills each franchisee for imprinting that franchisee's additional information onto the menus.

DISCUSSION

Massachusetts General Laws chapter 64H, section 2 imposes sales tax upon the retail sales of tangible personal property or telecommunications services in the Commonwealth at a rate of 5% of the gross receipts of the vendor from all such sales of such property or services, unless exempt. The definition of "sale" includes a transfer for consideration of title or possession of tangible personal property which has been produced, fabricated or printed to the special order of the customer. G.L. c. 64H, § 1. The sales tax is calculated on the sales price, defined as "the total amount paid by a purchaser to a vendor as consideration for a retail sale valued in money or otherwise." *Id.* In determining the sales price, the cost of materials used, labor or service cost, the cost of transportation of the property prior to its sale at retail, and any amount paid for any services that are a part of the sale should be included. *Id.*

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In addition, the Printing Regulation, 830 CMR 64H.6.2, explains the sales tax treatment of printers. Therein, printing is defined as the process of reproducing a design or image on a surface that is the end product of the production process, including lithography, multilithing, multigraphy, photocopying and laser printing. In general, a printer must collect sales tax when it sells printed material at retail. 830 CMR 64H.6.2(3). A sale at retail occurs when a printer sells printed material such as cards, catalogues, invitations, books, letterhead or photocopies to its customer who either uses or consumes the printed material, or distributes the material free of charge. *Id.* Section (4) of the Regulation provides that the sales tax is imposed on the total fee charged without any deduction for the part of the fee attributable to services rendered in the production process, such as overtime, set up charges, embossing or binding operations.

However, G.L. c. 64H, § 6(ff), in relevant part, exempts from the sales tax “sales of printed material which is manufactured in the commonwealth to the special order of a purchaser, to the extent such material is delivered to an interstate carrier, a mailing house, or a United States Post Office for delivery or mailing to a purchaser located outside the commonwealth or a purchasers [sic] designee located outside the commonwealth. . . .” In addition, the Printing Regulation reiterates this provision. See 830 CMR 64H.6.2(6). The § 6(ff) exemption was intended, in part, to put Massachusetts-based printers on an equal footing with out-of-state printers by removing a disincentive for Massachusetts customers to use Massachusetts printers to manufacture printed material that will ultimately be distributed to recipients outside of Massachusetts.^[1] The Commissioner has interpreted § 6(ff) to require that the printed material be delivered to an interstate carrier, mailing house, or United States Postal Service by the printer. DD 02-7.

The printing of the shells in the first stage of the printing process does not constitute a sale of tangible personal property. The shells are not the end product of the production process. Moreover, there is no transfer of title or possession of the shells. The completed menus, not the shells, are the tangible personal property printed to the special order of the Printer's customers, *i.e.*, the franchiser and the franchisees. Because the printing of the shells in the initial stage of the production process is not a sale of tangible personal property, the Printer should not charge the franchiser sales tax on the fee for printing the shells.

Again, the completed menus are tangible personal property printed to the special order of the Printer's customers, the franchiser and the franchisees. The transfers of possession or title of the menus is a sale subject to the sales tax, unless otherwise exempt. Most of the menus are delivered to UPS for delivery to franchisees located outside of Massachusetts. The sale of menus shipped to an out-of-state franchisee is exempt under G.L. c. 64H, § 6(ff). Thus, the Printer does not need to collect the sales tax on such sales.

The menus shipped to an in-state franchisee are subject to the sales tax. The five percent sales tax is calculated on the total amount charged by the Printer for printing the menus shipped to the in-state franchisee. That amount includes two components: 1) a pro rata share of the fee paid by the franchiser for the initial printing that is allocable to the menus shipped to the in-state franchisees; plus 2) the fee paid by the in-state franchisee for imprinting the franchisee's store-specific information. The sales tax is due upon transfer of possession or title of the menus to the in-state franchisee. This happens when the menus are shipped to the in-state franchisee after completion of the second and final stage of the printing process. At that time the Printer can include the sales tax in the bill to the in-state franchisee.^[2]

CONCLUSIONS

The Printer should not charge the franchiser sales tax on the fee for the initial printing. Upon transfer of title or possession of the menus, the sales tax is collected from the franchisees, unless otherwise exempt. The menus shipped to an out-of-state franchisee are exempt from the sales tax under G.L. c. 64H, § 6(ff). The menus shipped to an in-state franchisee are subject to the sales tax. The five percent sales tax is calculated on the total amount charged by the Printer for printing the menus shipped to the in-state franchisee. The sales tax is calculated on 1) a pro rata share of the fee paid by the franchiser for the initial printing that is allocable to the menus shipped to the in-state franchisee, plus 2) the fee paid by the in-state franchisee for imprinting its store information.

Very truly yours,

/s/Alan LeBovidge

Alan LeBovidge
Commissioner of Revenue

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LR 03-10

[\[1\]](#) General Laws chapter 64H, § 6(ff) was originally enacted in 1979 with an effective date retroactive to January 1, 1976. Prior to the enactment of section 6(ff), the Supreme Judicial Court, in *George S. Carrington Company v. State Tax Commission*, 375 Mass. 549 (1978), ruled that that the sales tax applied to printed greeting cards and fund raising materials purchased by religious charities and mailed by a Massachusetts printer to lists of prospective donors, 95% of which were located out-of-state. Section 6(ff) effectively reversed the result in *Carrington*.

[\[2\]](#) The Printer must maintain books and records sufficient to substantiate taxable and tax-exempt sales. G.L. c. 62C, § 25.